**Conviction of offence not charged**. —(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section [69](file:///F:\work_on_nlp\CHAPTER-06\173.htm#AA69) may be found guilty of any other offence of which he might have been found guilty if the provisions of the [Code of Criminal Procedure, 1973 (2 of 1974),]1 were applicable.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

## *NOTES*

1.The object of this section is to prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of offence other than that with which he is charged in the statement of the offence except in the cases specified in this section (see [notes in AR 30](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~5\279.htm#AR30)). A Court may, however, (as allowed by [AR 62(5)](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~5\305.htm#5)) find a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain immaterial variations, and this finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

*2. Alternative charges should not be preferred in the cases provided for in this section but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient" to prefer alternative charges, the more serious offence being placed first in order (see note to* [*AR 52(3)*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~5\296.htm#AR52_3)*).*

*3. This section does not permit a court-martial to find an accused guilty of one or other of two offences e.g., a finding of "not guilty of theft but guilty of dishonest misappropriation or criminal breach of trust."*

*4. This section does not apply to summary awards under* [*AA.s.80*](file:///F:\work_on_nlp\CHAPTER-07\181.htm#AA80)*,* [*83*](file:///F:\work_on_nlp\CHAPTER-07\185.htm#AA83)*,* [*84*](file:///F:\work_on_nlp\CHAPTER-07\185.htm#AA84) *or* [*85*](file:///F:\work_on_nlp\CHAPTER-07\186.htm#AA85) *but in such cases the officer dealing with the case, if not the CO, can have the charge amended by the CO.*

*5. Sub-sec (1). — Care must be taken in this case to ensure that the provisions of* [*AA.s.122*](file:///F:\work_on_nlp\CHAPTER-10\211.htm#AA122) *are not offended.*

*6. Sub-sec (5). —The special finding under this sub-sec applies only where the charge is laid under one of the specified clauses of* [*AA.s.52*](file:///F:\work_on_nlp\CHAPTER-06\158.htm#AA52) *and not when the accuse is charged under* [*AA.s.69*](file:///F:\work_on_nlp\CHAPTER-06\173.htm#AA69) *with having committed the civil offence of theft etc., for which see sub-sec (6).*

*7. Sub-sec (6). —For the special findings referred to in this sub-sec, see Cr PC, 1973, ss.221 and 222 (Part III).*

*8. Sub-sec (7). —Thus, a person charged with using criminal force to his superior officer in the execution of his office may be convicted of using criminal force to his superior officer; or a person charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a person charged with wilfully allowing the escape of a person in his charge may be found guilty of allowing his escape without reasonable excuse.*

*9. Sub-sec (8). —(a) Where a person charged with an offence is found guilty of having attempted or abetted the commission of that offence and no express provision has been made for the punishment for such attempt or abetment, the punishment will be laid in as specified in* [*AA.s.65*](file:///F:\work_on_nlp\CHAPTER-06\171.htm#AA65) *for attempt and* [*AA.ss.66*](file:///F:\work_on_nlp\CHAPTER-06\172.htm#AA66) *to* [*68*](file:///F:\work_on_nlp\CHAPTER-06\173.htm#AA68) *for abetment.*

*(b)*[*AA.ss.38(1)*](file:///F:\work_on_nlp\CHAPTER-06\140.htm#AA38)*,* [*51*](file:///F:\work_on_nlp\CHAPTER-06\157.htm#AA51) *and* [*64(e)*](file:///F:\work_on_nlp\CHAPTER-06\170.htm#AA64) *make attempt to commit the offences specified therein as substantive offences.*